

# OFFICE OF THE ATTORNEY GENERAL



94-00012

JIMMY EVANS  
ATTORNEY GENERAL  
STATE OF ALABAMA

OCT 20 1993

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 242-7300

Honorable David P. Wilson  
Mayor of Summerdale  
P. O. Box 148  
Summerdale, AL 36580

Municipalities - Alcoholic  
Beverages - City Councils -  
Alcoholic Beverage Licensing  
Code

The City Council of Summerdale  
cannot delegate to the municipal  
judge or another official  
the task of granting permis-  
sion to sell alcoholic bever-  
ages pursuant to Code of  
Alabama 1975, §§ 28-3A-11,  
28-3A-12 and 28-3A-13.

Dear Mayor Wilson:

This opinion is issued in response to your request for  
an opinion from the Attorney General.

## QUESTION

May the City Council of Summerdale  
delegate to the municipal judge or another  
city official the task of granting permis-  
sion to sell alcoholic beverages pursuant  
to Code of Alabama 1975, §§ 28-3A-11,  
28-3A-12, and 28-3A-13?

## FACTS, LAW AND ANALYSIS

The following facts are set out in your request:

The city would want, through ordinance, to provide that the municipal judge would grant permission for the license of a municipality provided the applicant met all requirements under the regulations for granting the license. It would not allow the judge any choice but to grant permission if these were met. Of course, if they were not, permission would be denied.

Code of Alabama 1975, §§ 28-3A-11, 28-3A-12 and 28-3A-13 concern the granting of lounge retail liquor licenses, club liquor retail licenses and restaurant retail liquor licenses. Each provision provides that an applicant for such a license in a municipality must present his application to the governing authority of the municipality and obtain the governing authority's consent and approval.

Section 89 of the Constitution of Alabama 1901 states that the legislature shall not have the power to authorize municipalities to pass laws inconsistent with the general laws of this state. Code of Alabama 1975, § 11-45-1 authorizes a municipality to adopt ordinances and resolutions not inconsistent with the laws of the state. State law clearly provides that retail liquor licenses are to be approved by the governing authority of a municipality. This governing authority is the city council. Opinions of the Attorney General to Honorable Willie Carnes, Mayor, City of Attalla, dated January 19, 1989, A.G. No. 89-00136, and to Honorable Clarence F. Rhea, City Attorney, Town of Reece City, dated June 26, 1981, A.G. No. 81-00436. There is no authority under state law for a municipal governing body to enact an ordinance delegating the authority to approve the granting of retail liquor licenses to another municipal official.

#### CONCLUSION


The City Council of Summerdale cannot delegate to the municipal judge or another official the task of granting permission to sell alcoholic beverages pursuant to Code of Alabama 1975, §§ 28-3A-11, 28-3A-12 and 28-3A-13.

Honorable David P. Wilson  
Page 3

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

JE/LKO/jho

W9.93/OP